

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Arkansas Department of Correction)	File No. SLD-177074
School District)	
Pine Bluff, Arkansas)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: April 17, 2002

Released: April 22, 2002

By the Wireline Competition Bureau:

1. Before the Wireline Competition Bureau is a Request for Review filed by the Arkansas Department of Correction School District (Arkansas DOC), Pine Bluff, Arkansas.¹ Arkansas DOC seeks review of the decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), denying Arkansas DOC's Funding Year 3 application for discounted services under the schools and libraries universal service mechanism on the grounds that the recipients, various correctional units within the Arkansas DOC system, were ineligible entities under program rules.² We find that the schools within the Arkansas Department of Correction School District satisfy the statutory definition of schools that are eligible for discounts. We therefore grant the Request for Review, and remand this application for further review consistent with this Order.

¹ Letter from Diane Kelnhofer, Arkansas Department of Correction School District, to Federal Communications Commission, filed March 1, 2001 (Request for Review). We acknowledge receipt of Arkansas DOC's submission of additional information regarding its lunch program but we do not consider it necessary to the resolution of this appeal. Letter from Dr. Charles F. Allen, Arkansas Department of Corrections School District, to Federal Communications Commission, filed June 12, 2001.

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

2. Only eligible schools and libraries may receive universal service funds under the schools and libraries universal service mechanism.³ To be eligible, a school must, among other things, meet the statutory definition of “elementary school” or “secondary school” contained in the Elementary and Secondary Education Act of 1965 (Education Act).⁴ Under the Education Act, an “[e]lementary school” is defined as “a nonprofit institutional day or residential school that provides elementary education, as determined under State law.”⁵ A “[s]econdary school” is defined as “a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12.”⁶ Thus, we look to the applicable State law to determine whether an educational entity is eligible to receive discounted services.⁷

3. Arkansas DOC is a school district created to fund and administer the various educational institutions for persons incarcerated in the Arkansas Department of Correction system, including juveniles incarcerated in a juvenile detention facility.⁸ In Funding Year 3, Arkansas DOC filed an application with SLD for discounted telecommunications and Internet access services.⁹ SLD denied the application, finding that a significant portion of each funding request was for entities not eligible to receive funding.¹⁰

4. Arkansas DOC appealed to SLD, asserting that its “school,” by which it meant the entire school district, was considered a public school district under Arkansas law.¹¹ Arkansas

³ 47 C.F.R. § 54.501; *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9066, para. 552 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁴ 47 U.S.C. §§ 254(h)(4), 254(h)(7)(A).

⁵ 20 U.S.C. § 8801(14).

⁶ 20 U.S.C. § 8801(25).

⁷ *Cf. Hooks v. Clark County School District*, 228 F.3d 1036, 1040 (9th Cir. 2000) (*Hooks*) (analyzing materially identical definitions of “elementary school” and “secondary school” in Individuals with Disabilities Education Act (IDEA) and concluding that definition of “elementary school” and “secondary school” are thereby “committed to ‘State law’”).

⁸ Request for Review, at 1-2. *See also* paras. 8-9, *infra*.

⁹ Request for Review, at 1; FCC Form 471, Arkansas Department of Correction School District, filed January 16, 2000 (Arkansas DOC Form 471).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Diane Kelnhofer, Arkansas Department of Correction School District, dated April 14, 2000, at 6-12.

¹¹ Letter from Diane Kelnhofer, Arkansas Department of Correction School District, to Schools and Libraries Division, Universal Service Administrative Company, filed April 31, 2000, at 2.

DOC argued that it therefore satisfied the definitions of “elementary school” and “secondary school” applicable to the schools and libraries program.¹²

5. SLD denied the appeal.¹³ It agreed that Arkansas law controlled the question of whether entities were eligible schools.¹⁴ However, it found that the application “included costs for . . . juvenile [detention] facilities, which . . . are correctional facilities for incarcerated youth.”¹⁵ SLD found that a juvenile detention facility is not an eligible entity in the State of Arkansas, and concluded that “[a]ll entities you listed to receive discount[s] are therefore ineligible.”¹⁶ Arkansas DOC then filed the pending Request for Review.

6. In its Request for Review, Arkansas DOC argues that, contrary to SLD’s view of its application, it is not requesting funding for individual juvenile detention facilities, but for the school district (Arkansas DOC) itself.¹⁷ As an example, Arkansas DOC asserts that the discounted Internet access it is requesting will be provided to the various school principals’ offices in order to allow teachers access to the Internet so that they can prepare for classes.¹⁸ These offices are located in the various juvenile detention facilities.¹⁹ Arkansas also cites to provisions of the Arkansas Code, establishing that the Arkansas DOC school district is a public school district.²⁰

7. We first address Arkansas DOC’s claim that the school district, rather than the juvenile facility, will receive the discounted services. Based on Arkansas DOC’s example of the principal’s office, we find that it is merely clarifying that the services will be delivered to the school institutions within the juvenile detention facilities, rather than to the juvenile justice facilities in general. We therefore must determine whether these educational institutions are elementary or secondary schools under the definition established in the Education Act. As noted above, the Education Act looks to the applicable State law to determine which institutions qualify as elementary and secondary schools.²¹

¹² *Id.*

¹³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Diane Kelnhofer, Arkansas Department of Correction School District, dated February 5, 2001 (Administrator’s Decision on Appeal).

¹⁴ *Id.* at 1.

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 2.

¹⁷ Request for Review at 1.

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *See supra*, para. 2.

8. After reviewing the applicable law, we find that the educational institutions at issue are schools as determined under Arkansas law. The Arkansas DOC school district and its educational institutions are authorized by and operate pursuant to provisions of the Arkansas Code. Specifically, section 12-29-301(a) states that “[p]roperties owned by the State of Arkansas and occupied by the various units of the Department of Correction are by this subchapter designated as a school district to be known as the Department of Correction School District.”²² Section 12-29-301(b) further provides that “[t]his district is created for the purpose of providing elementary, secondary, and vocational and technical education to all persons incarcerated in the Department of Correction facilities.”²³ The fact that Arkansas statutory provisions authorize these institutions under the administrative governance of a public school district supports the conclusion that the educational institutions created pursuant to this subchapter are considered schools under Arkansas law.

9. This conclusion is also directly supported by sections of the Arkansas Code that expressly refer to these institutions as schools. For example, section 12-29-303 provides that

*[t]he schools established under the provisions of this subchapter and those persons incarcerated who attend the schools shall be entitled to all of the privileges provided generally to common public schools and adult education programs administered by the State Board of Education to students who attend them under the laws of the State of Arkansas, provided the privileges do not conflict with the rules, regulations, and policies of the Department of Correction or the laws of the state respecting the establishment and operation of the department.*²⁴

Section 12-29-304, dealing with the sources of funding, describes the sources for funding the cost of operating “the school program in the district authorized by this subchapter,” sources that include “the Public School Fund.”²⁵ We find that the express reference to these institutions as schools provides a clear indication that they are, in fact, schools “as determined under State law.”

10. The regulations governing the operation of the educational institutions in juvenile detention facilities specifically are also consistent with this conclusion. These regulations, promulgated by the Arkansas Department of Education, confirm that the juvenile detention facilities are reimbursed educational costs by the local school district (in this case, the Arkansas Department of Correction school district) and that these educational institutions are subject to the mandates of the Individuals with Disabilities Education Act.²⁶ Given that the secondary and elementary schools to which the IDEA mandate applies are also defined by State law, Arkansas’s application of the IDEA to the juvenile detention facility educational institutions is further

²² Ark. Code Ann. § 12-29-301(a).

²³ Ark. Code Ann. § 12-29-301(b).

²⁴ Ark. Code Ann. § 12-29-303 (emphasis added).

²⁵ Ark. Code Ann. §§ 12-29-304(a), 12-29-304(a)(2)(B).

²⁶ See Code Ark. R. 005.15.002 at 4.00.

evidence that Arkansas classifies these institutions as schools.²⁷ We therefore conclude, on the basis of the record before us and the law discussed above, that juvenile detention facility educational institutions that provide elementary or secondary education in the State of Arkansas constitute elementary and secondary schools under the Education Act.

11. Because we find that the institutions provided under the Arkansas Department of Correction school district do have the status of schools under Arkansas law, we vacate SLD's denial of funding and remand for further review. In so concluding, we emphasize the narrow extent of our conclusion. We find only that those juvenile detention facility educational institutions that provide elementary or secondary education in the State of Arkansas meet the definition of elementary and secondary schools established in the Education Act. We leave all other issues for SLD to address as needed on further review. In so doing, we encourage SLD to proceed with caution in this novel context to ensure that universal service funds are distributed in compliance with all statutory and regulatory requirements and restrictions.

12. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by the Arkansas Department of Correction School District, Pine Bluff, Arkansas, on March 1, 2001 IS GRANTED, and the application IS REMANDED to SLD for further review consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

²⁷ *Hooks*, 228 F.3d at 1040.